

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA, Plaintiff, v. 4. ABDULKADIR NUR SALAH, Defendant.	Case No. 22-CR-223(4)(NEB/DTS) MOTION <i>IN LIMINE</i> NO. 9 RE EVIDENCE OF OTHER CONSPIRACIES
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Defendant Abdulkadir Nur Salah requests an order precluding the government from introducing evidence of other conspiracies not charged in the indictment in this case, including evidence relating to other food distribution sites not referenced in the indictment.

The Indictment in this case charges the Defendants with participation in a single conspiracy, to submit fraudulent claims in order to receive federal funds intended to support the distribution of meals to eligible children through the Federal Child Nutrition Program. ECF No. 1 at ¶ 22. “When a single conspiracy is alleged in an indictment, but the proof at trial shows multiple conspiracies, there is a variance.” *United States v. Jones*, 880 F.2d 55, 66 (8th Cir. 1989). A variance can constitute grounds for reversal of a conviction where it “infringe[s] a defendant's substantial rights.” *United States v. Ghant*, 339 F.3d 660, 662 (8th Cir. 2003). Such an infringement can occur where “the defendant was prejudiced by a ‘spillover’ of evidence from one conspiracy to another.” *Jones*, 880 F.2d at 66 (citing *United States v. George*, 752 F.2d 749, 754 (1st Cir. 1985);

United States v. Scott, 511 F.2d 15, 19–20 (8th Cir. 1975); *United States v. Calabro*, 467 F.2d 973, 983 (2d Cir. 1972)); *see also Kotteakos v. United States*, 328 U.S. 750, 769, 66 S. Ct. 1239, 1250, 90 L. Ed. 1557 (1946) (reversing convictions where evidence at trial proved eight separate conspiracies, citing risk that evidence and instructions “confuse[d] the common purpose of a single enterprise with the several, though similar, purposes of numerous separate adventures of like character”).

This case poses a unique risk of prejudicial spillover because among the defendants is Aimee Bock, Feeding Our Future’s Executive Director. Feeding Our Future sponsored the participation of numerous entities in the Federal Child Nutrition Program, many of which are not mentioned in the Indictment in this case, and which have no connection to Defendant Salah.

The government’s exhibit list includes numerous exhibits relating to such sites. The government’s list includes, for example, 12 exhibits relating to the “SIR Boxing Site,” which is not referenced in the indictment. *See* Gov’t List, P-1 through P-12. It also includes nine exhibits relating to the “Feeding Our Future Arcade / Taylor” site, which is similarly not referenced in the indictment. *See* Gov’t List, P-60, P-61, P-70 through P-76. The same is true of the seven exhibits associated with the Lido / “SAFE Somali America Faribault Education” site (Q-40 through Q-46), the six exhibits associated with the “Great Lakes” site (Q-51 through Q-56), and the nine exhibits associated with the Shamsia Hopes site (Q-60 through Q-68).

To the extent the government seeks to offer those exhibits, or testimony about those sites, they would relate to one or more conspiracies different from the one with

which Defendant Salah is charged. The risk that this evidence will create prejudicial spillover that infringes Defendant Salah's substantial rights increases with the number of other conspiracies to which the evidence adduced at trial relates. *See Ghant*, 339 F.3d at 663 ("Both the number of conspiracies putatively proven and the number of defendants involved are crucial to determining whether a variance is prejudicial.") (citation omitted).

To avoid this risk of prejudice, and the attendant risk of an impermissible variance from the indictment in this case, the Court should issue an order precluding the government from introducing evidence relating to food distribution sites that are not referenced in the Indictment.

Dated: January 10, 2025

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